MT LEGISLATIVE HISTORY

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Chapter 544 1991

Bill H 917 S _____ Original bill & hist. ✓ C

H. Committee on Human Services

Hearing Date(s)	C
2/20	✓ C
_____	C
_____	C

S. Committee on Public Health

Hearing Date(s)	C
3/20	✓ C
_____	C
_____	C

Date Out			
	2/23	✓ C	3/27 ✓ C

Did this bill originate in an interim committee? ___ Yes ___X___ No

Committee _____ Report _____

HOUSE BILL NO. 917

INTRODUCED BY TOOLE, KEATING, MEASURE, COBB,
STICKNEY, RUSSELL, SQUIRES
BY REQUEST OF THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

IN THE HOUSE

FEBRUARY 18, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON HUMAN SERVICES & AGING.
	FIRST READING.
FEBRUARY 23, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 25, 1991	PRINTING REPORT.
FEBRUARY 26, 1991	SECOND READING, DO PASS.
	ENGROSSING REPORT.
FEBRUARY 27, 1991	THIRD READING, PASSED. AYES, 100; NOES, 0.
	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 4, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY.
	FIRST READING.
MARCH 27, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
APRIL 3, 1991	SECOND READING, CONCURRED IN.
APRIL 4, 1991	THIRD READING, CONCURRED IN. AYES, 50; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 10, 1991	RECEIVED FROM SENATE.
	SECOND READING, AMENDMENTS

CONCURRED IN.

APRIL 11, 1991

THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

LC 1178/01

HOUSE BILL NO. 917

INTRODUCED BY [signatures]

BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE AIDS PREVENTION ACT; CHANGING THE DEFINITION OF "HEALTH CARE PROVIDER" TO CONFORM WITH THE UNIFORM HEALTH CARE INFORMATION ACT; CLARIFYING THE KIND OF COUNSELING THAT A HEALTH CARE PROVIDER IS REQUIRED TO GIVE IN ADMINISTERING AN HIV-RELATED TEST; ALLOWING NEXT-OF-KIN, A SIGNIFICANT OTHER, OR A DESIGNATED INDIVIDUAL TO CONSENT TO AN HIV-RELATED TEST ADMINISTERED TO AN UNCONSCIOUS OR MENTALLY INCAPACITATED PERSON; ESTABLISHING THAT AN ORDER TO PERFORM AN HIV-RELATED TEST ALSO CERTIFIES THAT PRIOR INFORMED CONSENT WAS OBTAINED; REQUIRING A HEALTH CARE PROVIDER WHO DOES NOT PROVIDE HIV-RELATED TESTS ON AN ANONYMOUS BASIS TO INFORM ALL THOSE WISHING TO BE TESTED THAT ANONYMOUS TESTING IS AVAILABLE ELSEWHERE; REQUIRING THE SUBJECT OF AN HIV-RELATED TEST TO DESIGNATE A HEALTH CARE PROVIDER TO RECEIVE THE RESULTS OF THE TEST; REQUIRING INSURANCE COMPANIES TO INFORM APPLICANTS OF POSITIVE HIV TEST RESULTS AND ALLOW THEM ACCESS TO NEGATIVE HIV TEST RESULTS; CLARIFYING WHEN CONSENT TO A TEST MAY BE WITHDRAWN AND WHEN IT IS NOT REQUIRED; ALLOWING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT STANDARDS FOR HIV-RELATED TESTING OF ORGAN, TISSUE, AND SEMEN DONORS; CLARIFYING WHEN THE IDENTITY OF THE SUBJECT OF AN HIV-RELATED TEST AND TEST RESULTS MAY BE DISCLOSED BY GOVERNMENT HEALTH CARE WORKERS; REVISING THE UNIFORM HEALTH CARE INFORMATION ACT TO ALLOW HEALTH CARE PROVIDERS TO RELEASE HEALTH CARE INFORMATION WITHOUT CONSENT WHEN DISCLOSURE WILL AVOID OR MINIMIZE DANGER TO THE HEALTH OR SAFETY OF A PERSON; MAKING IT A MISDEMEANOR FOR A PERSON TO UNLAWFULLY DISCLOSE CONFIDENTIAL HEALTH CARE INFORMATION; INCREASING THE CIVIL PENALTIES FOR VIOLATION OF THE AIDS PREVENTION ACT; AMENDING SECTIONS 50-16-529, 50-16-1003, 50-16-1007, 50-16-1008, 50-16-1009, AND 50-16-1013, MCA; AND PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 3] gives authority to the department of health and environmental sciences to adopt rules setting standards that must be met before donation of an organ, semen, or tissues in order to prevent transmission of the virus causing acquired immune deficiency syndrome (AIDS). It is intended that the department adopt nationally accepted standards that are developed for each type of donation and that are apparently most effective in preventing transmission of the virus.

INTRODUCED BILL
HB 917

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-16-1003, MCA, is amended to read:

"50-16-1003. Definitions. As used in this part, the following definitions apply:

(1) "AIDS" means acquired immune deficiency syndrome as further defined by the department in accordance with standards promulgated by the centers for disease control of the United States public health service.

(2) "Contact" means:

(a) an individual identified by the subject of an HIV-related test as a past or present sexual partner or as a person with whom the subject has shared hypodermic needles or syringes; or

(b) any other person who has been exposed to the test subject in a manner, voluntary or involuntary, that may allow HIV transmission.

(3) "Department" means the department of health and environmental sciences provided for in 2-15-2101.

(4) "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

(5) "HIV-related condition" means a chronic disease

resulting from infection with HIV, including but not limited to AIDS and asymptomatic seropositivity for HIV.

(6) "HIV-related test" means a ~~laboratory~~ test approved by the federal food and drug administration, including but not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of HIV or antibodies to HIV.

(7) "Health care facility" means a health care institution, private or public, including but not limited to a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

(8) "Health care provider" means a ~~physician,--nurse,--paramedic,--psychologist,--dentist,-public-health-department agent,--or--other---person---providing---medical,---nursing,--psychological,--or--other--health--care-services-of-any-kind~~ person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(9) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.

(10) "Local board" means a county, city, city-county, or district board of health.

(11) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(12) "Next-of-kin" means an individual who is a parent, adult child, grandparent, adult sibling, or legal spouse of a person.

~~(10)~~(13) "Person" means an individual, corporation, organization, or other legal entity.

~~(11)~~(14) "Posttest counseling" means counseling, conducted at the time the HIV-related test results are given, and includes, at a minimum, written materials provided by the department.

~~(12)~~(15) "Pretest counseling" means the provision of ~~written materials~~ counseling to the subject prior to conduct of an ~~HIV~~ HIV-related test. ~~The~~, including, at a minimum, written materials ~~must be~~ developed and provided by the department.

~~(13)~~(16) "Release of test results" means a written authorization for disclosure of HIV-related test results that:

(a) is signed and dated by the person tested or the person authorized to act for the person tested; and ~~that~~

(b) specifies the nature of the information to be

disclosed and to whom disclosure is authorized.

(17) "Significant other" means an individual living in a current spousal relationship with another individual but who is not legally a spouse of that individual.

~~(14)~~(18) (a) "Written informed consent" means an agreement in writing that is freely executed by the subject of an HIV-related test, ~~or~~ by the subject's legal guardian, or, if there is no legal guardian and the subject is unconscious or otherwise mentally incapacitated, by the subject's next-of-kin, significant other, or a person designated by the subject in hospital records to act on the subject's behalf, and that includes at least the following:

(i) an explanation of the test, including its purpose, potential uses, limitations, and the meaning of its results; and

(ii) an explanation of the procedures to be followed for confidentiality, blood drawing, and counseling, including notification that the test is voluntary and that consent may be withdrawn at any time until the blood sample is taken;

(iii) ~~a discussion~~ an explanation of whether and to whom the subject's name and test results may be disclosed; ~~and~~

(iv) a statement that the test may be obtained anonymously if the subject wishes~~.~~;

(v) the name and address of a health care provider whom the subject approves to receive the subject's test results

and to provide the subject with posttest counseling; and

(vi) if the consent is for a test being performed as part of an application for insurance, a statement that only a positive test result will be reported to the designated health care provider and that negative test results may be obtained by the subject from the insurance company.

(b) The department shall develop a form agreement that may be used for purposes of this subsection."

Section 2. Section 50-16-1007, MCA, is amended to read:

"50-16-1007. Testing -- counseling -- informed consent -- penalty. (1) ~~A person may not request an~~ An HIV-related test ~~without first~~ may be ordered only by a health care provider and only after receiving the written informed consent of:

(a) the subject of the test; ~~or~~

(b) the subject's legal guardian;

(c) the subject's next-of-kin or significant other if:

(i) the subject is unconscious or otherwise mentally incapacitated;

(ii) there is no legal guardian;

(iii) there are medical indications of an HIV-related condition; and

(iv) the test is advisable in order to determine the proper course of treatment of the subject; or

(d) the subject's next-of-kin or significant other or

the person, if any, designated by the subject in hospital records to act on the subject's behalf if:

(i) the subject is in a hospital; and

(ii) the circumstances in subsection (1)(c)(i) through (iv) exist.

(2) ~~A~~ When a health care provider ~~shall certify in writing~~ orders an HIV-related test, he also certifies that informed consent has been received prior to ~~requesting testing. Testing may only be requested by a health care provider.~~ ordering an HIV-related test.

~~(2)~~(3) ~~Prior to executing an informed consent agreement,~~ Before the subject of the test executes an informed consent agreement, the health care provider ordering the test or his designee must give pretest counseling to:

(a) the subject; ~~or~~

(b) the subject's legal guardian ~~must be given pretest counseling~~;

(c) the subject's next-of-kin or significant other if:

(i) the subject is unconscious or otherwise mentally incapacitated; and

(ii) there is no guardian; or

(d) the subject's next-of-kin or significant other or the person, if any, designated by the subject in hospital records to act on the subject's behalf if:

(i) the subject is in the hospital; and

(ii) the circumstances in subsection (1)(c)(i) and (ii) exist.

~~(3)~~(4) A health care provider who does not provide HIV-related tests on an anonymous basis shall inform a each person who wishes to be tested ~~anonymously~~ that anonymous testing is available ~~at-one-of-the-counseling-testing--sites established-by-the-department~~ elsewhere.

~~(4)~~(5) The subject of an HIV-related test or any of the subject's representatives authorized by subsection (1) to act in the subject's stead shall designate, as part of his written informed consent, a health care provider to receive the results of an HIV-related test. The designated health care provider ~~must--be--given--to-the-health-care-provider designated-by-the-subject,-who~~ shall inform the subject or the subject's representative of the results in person.

~~(5)~~(6) At the time the subject of a test or the subject's representative is given the test results, the health care provider or the provider's designee shall give the subject or the subject's representative ~~must-be-provided with~~ posttest counseling.

(7) If a test is performed as part of an application for insurance, the insurance company must ensure that:

(a) negative results can be obtained by the subject or his representative upon request; and

(b) positive results are returned to the health care provider designated by the subject or his representative.

~~(6)~~(8) A minor may consent or refuse to consent to be the subject of an HIV-related test, pursuant to 41-1-402.

~~(7)~~(9) Subsections (1) through ~~(5)~~ (6) do not apply to:

(a) the performance of an HIV-related test by a health care provider or health care facility that procures, processes, distributes, or uses a human body part donated for a purpose specified under Title 72, chapter 17, if the test is necessary to assure medical acceptability of the gift for the purposes intended;

(b) the performance of an HIV-related test for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

(c) the performance of an HIV-related test when:

(i) the subject of the test is unconscious or otherwise mentally incapacitated;

(ii) there are medical indications of an HIV-related condition;

(iii) the test is advisable in order to determine the proper course of treatment of the subject; and

(iv) none of the individuals listed in subsections (1)(b), (1)(c), or (1)(d) exists or is available within 24 hours after the test is determined to be advisable; or

(d) the performance of an HIV-related test conducted pursuant to 50-13-107 or 50-18-108, with the exception that the pretest and posttest counseling must still be given.

~~(8)~~(10) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of $1,000 or imprisonment for up to 6 months, or both."

Section 3. Section 50-16-1008, MCA, is amended to read:

"**50-16-1008. Testing of donors of organs, tissues, and semen required -- penalty.** (1) ~~**immediately--prior**~~ Prior to donation of an organ, semen, or tissues, HIV-related testing of a prospective donor, in accordance with nationally accepted standards adopted by the department by rule, is required unless the transplantation of an indispensable organ is necessary to save a patient's life and there is not sufficient time to perform an HIV-related test.

(2) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of up to $1,000 or imprisonment of up to 6 months, or both."

Section 4. Section 50-16-1009, MCA, is amended to read:

"**50-16-1009. Confidentiality of records -- notification of contacts -- penalty for unlawful disclosure.** (1) A Except as provided in subsection (2), person may not disclose or be compelled to disclose the identity of a subject of an HIV-related test or the results of a test in a manner that permits identification of the subject of the test, except to

the extent allowed under the Uniform Health Care Information Act, Title 50, chapter 16, part 5.

(2) A local board, local health officer, or the department may disclose the identity of the subject of an HIV-related test or the test results only to the extent allowed by the Government Health Care Information Act, Title 50, chapter 16, part 6, unless it is in possession of that information because a health care provider employed by it provided health care to the subject, in which case the Uniform Health Care Information Act governs the release of that information.

~~(2)~~(3) If a health care provider informs the subject of an HIV-related test that the results are positive, the provider shall encourage the subject to notify persons ~~**with whom there has been a contact capable of spreading--HIV**~~ who are potential contacts. If the subject is unable or unwilling to notify all contacts, the health care provider may ask the subject to disclose voluntarily the identities of the contacts and to authorize notification of those contacts by a health care provider. A notification may state only that the contact may have been exposed to HIV and may not include the time or place of possible exposure or the identity of the subject of the test.

(4) A person who discloses or compels another to disclose confidential health care information in violation

of this section is guilty of a misdemeanor punishable by a fine of $1,000 or imprisonment for 1 year, or both."

Section 5. Section 50-16-1013, MCA, is amended to read:

"50-16-1013. **Civil remedy.** (1) A person aggrieved by a violation of this part has a right of action in the district court and may recover for each violation:

(a) against a person who negligently violates a provision of this part, damages of ~~$1,000~~ $5,000 or actual damages, whichever is greater;

(b) against a person who intentionally or recklessly violates a provision of this part, damages of ~~$5,000~~ $20,000 or actual damages, whichever is greater;

(c) reasonable attorney fees; and

(d) other appropriate relief, including injunctive relief.

(2) An action under this section must be commenced within 3 years after the cause of action accrues.

(3) The department may maintain a civil action to enforce this part in which the court may order any relief permitted under subsection (1).

(4) Nothing in this section limits the rights of a subject of an HIV-related test to recover damages or other relief under any other applicable law or cause of action.

(5) Nothing in this part may be construed to impose civil liability or criminal sanctions for disclosure of an

HIV-related test result in accordance with any reporting requirement for a diagnosed case of AIDS or an HIV-related condition by the department or the centers for disease control of the United States public health service."

Section 6. Section 50-16-529, MCA, is amended to read:

"50-16-529. **Disclosure without patient's authorization based on need to know.** A health care provider may disclose health care information about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is:

(1) to a person who is providing health care to the patient;

(2) to any other person who requires health care information for health care education; to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; for assisting the health care provider in the delivery of health care; or to a third-party health care payor who requires health care information and if the health care provider reasonably believes that the person will:

(a) not use or disclose the health care information for any other purpose; and

(b) take appropriate steps to protect the health care information;

(3) to any other health care provider who has

previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider not to make the disclosure;

(4) to immediate family members of the patient or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with the laws of the state and good medical or other professional practice, unless the patient has instructed the health care provider not to make the disclosure;

(5) to a health care provider who is the successor in interest to the health care provider maintaining the health care information;

(6) for use in a research project that an institutional review board has determined:

(a) is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(b) is impracticable without the use or disclosure of the health care information in individually identifiable form;

(c) contains reasonable safeguards to protect the information from improper disclosure;

(d) contains reasonable safeguards to protect against directly or indirectly identifying any patient in any report

of the research project; and

(e) contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(7) to a person who obtains information for purposes of an audit, if that person agrees in writing to:

(a) remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(b) not disclose the information further, except to accomplish the audit or to report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient or other unlawful conduct by a health care provider; and

(8) to an official of a penal or other custodial institution in which the patient is detained; and

(9) to any person if the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual."

NEW SECTION. **Section 7.** Effective date. [This act] is effective July 1, 1991.

-End-

annually.

Proponents' Testimony:

Denzel Davis, Department of Health & Environmental Sciences, submitted written testimony. EXHIBIT 16

Opponents' Testimony: None

Questions From Committee Members:

REP. CROMLEY asked if in the past has there been licenses issued for periods of less than one year. Mr. Davis stated that we can issue licenses for a period of less than 1 year if the facility gave problem under the policy provision licenses.

Closing by Sponsor:

REP. NELSON stated that this bill is at the request of the Governor. This will make the DHES more responsive to the needs of the community and not only in doing so, is able to respond to the needs of the citizen much better than an arbitrary system as we have had.

EXECUTIVE ACTION ON HB 700

Motion: REP. CROMLEY MOVED HB 700 DO PASS.

Discussion:

REP. MESSMORE stated that this is a blessed bill.

REP. S. RICE asked why this is a blessed bill. REP. MESSMORE stated that it helps the facilities be regulated and inspected and all the health care facilities in Montana.

REP. BECKER stated that she will oppose the bill

Vote: Motion carried 13-7 with REPS. BECKER, DOWELL, GALVIN, LEE, SQUIRES, RUSSELL, and WHALEN voting no.

HEARING ON HB 917

Presentation and Opening Statement by Sponsor:

REP. HOWARD TOOLE, House District 60, Southwest Missoula, stated that this bill is at the request of the Department of Health & Environmental Sciences. The bill is somewhat complex because it deals with the AIDS Prevention Act. This is an Act to revise the 1989 Act.

Proponents' Testimony:

Judith Gedrose, Department of Health & Environmental Sciences,

submitted written testimony. EXHIBIT 17

F. Woodside Wright, Montana AIDS Advisory Council, submitted written testimony. EXHIBIT 18

Vern Erickson, Montana State Firemans Association, stated that by being first responders on many car wrecks or suicides they have no control over the conditions of getting exposure to body fluids. It has been impossible in the past to collect information for any tests to find out if they have been exposed to the HIV virus.

Tom Hopgood, Health Insurance Association of America, stated that they support the bill as drafted. With the provisions that pertain to the insurance company testing recognize that circumstances in which HIV test is performed in the insurance setting are different from the circumstances that have been formed. If someone is concerned about whether they have the HIV virus a person getting tested and the insurance situation is concerned with getting insurance. It is unnecessary for them to receive postcounseling if the result is negative. This bill does provide if the results are available to them and if the result is positive, then it is transmitted to that health care provider and post test counseling will be provided.

Scott Crichton, Director, American Civil Liberties Union, submitted written testimony. EXHIBIT 19

Mike Stephen, Montana Nurses Association, stated that the strong point in the provision for the renewal of the definition of health care providers. The pretest and posttest counseling are certainly adequate and the main objective is that this bill does safeguard those that have experienced occupational exposure.

Greg Oliver, Missoula City-County Health Department, stated that they are in support of HB 917.

Ellen Leahy, Missoula City-County Health Department, submitted written testimony. EXHIBIT 20

Mary Beth Frideres, Administrator, Lewis and Clark County Health Department, stated that they support the bill and not only the content of this bill, but certainly the process that was followed to come to the consensus on the points that are covered. A lot of thought and care from infected and affected individuals who are concerned about the big picture of protecting the rights of individuals and make it safe to encourage people to come in for testing, as well as address the very complex issues about testing, consent, and confidentiality. Lewis and Clark County Health Department supports this bill because its based on the premise that informed consent must be sought prior to HIV testing and education must be provided.

Jerome Loendorf, Montana Medical Association (MMA), stated that

MMA supports this bill in its entirety. The provisions at the bottom of page 10 deal with testing of a person who is unconscious or otherwise mentally incapacitated and are medical indications of a HIV related medical condition, and the test is advisable in order to determine priority. We are then required to wait for 24 hours before you can begin testing a frequent. We believe this provision is unnecessary.

Opponents' Testimony: None

Questions From Committee Members:

REP. S. RICE asked if this bill will be combined with some of the other bills that have gone to the subcommittee. REP. RUSSELL stated that her intention is to put this bill with the other bills that are currently in subcommittee.

REP. CROMLEY asked why the language on page 9, lines 4 through 8, were stricken from the bill. Ms. Gedrose stated that the language was changed with the belief that we're opening the possibility for anonymous testing in more places.

REP. BOHARSKI asked why the test would be more difficult to provide to the health care provider than to the individual. Mr. Hopgood stated that if you are providing negative test results to the provider, a person would have the test result made available to the individual, positive and negative have to be given to the provider. No, it would not be more difficult to provide the negative test results directly to the applicant in the insurance agency. Ms. Gedrose stated that the bill as drafted is a response to concern by health care providers who have received positive results of tests that they did not order.

REP. J. RICE stated that at the earlier hearing on HB 281, the committee heard testimony that a number of health care workers had been exposed to the virus who were not able to obtain the test they felt necessary to the help assess the organization, do you feel that this bill addresses the situation for the health care workers? Mr. Loendorf stated that it does not, but it is in conflict with the rest of the situation. HB 281 can either be placed in this bill or the wording changed to be passed with this bill.

REP. BECKER asked how the insurance company works to get an application for life and health insurance, is it a physical or is it a separate test. Mr. Hopgood stated that in a normal situation you apply for a policy. The insurance company sends you to a health care provider that takes a battery of tests and then asks questions if whether you smoke and those types of questions. In connection with that, they would draw blood from you and then send it off to be tested in a laboratory.

REP. BECKER asked if the person applying for the insurance pays for the insurance test. Mr. Hopgood stated that the insurance

agent pays for this. There are different ways in paying.

REP. STICKNEY asked if the insurance companies feel that they need to have this paragraph in this act. **Mr. Hopgood** said yes.

REP. STICKNEY asked if the EMI people were covered in a separate bill that was passed last session that enabled them to get test results if they were exposed to bodily fluids. **Mr. Erickson** stated that you can require that you get the results. **REP. SQUIRES** stated that the legislature did pass that bill. It said that we could get results, but we couldn't get he answer back.

REP. BECKER asked why 24 hours is included in the bill. **Ms Frideres** stated that this was to give an amount of time to identify someone who can give consent.

Closing by Sponsor:

REP. TOOLE stated that section 6 talks about disclosure without the patients authorization based upon need to know. There is a similar provision on page 12 that allows a local board of health or health department to have access to information including the test results. On the insurance matter when the results are negative the insurer can include that in the application packet, when it is positive, the reason for the statute is that the health care provider can do the post test counseling.

HEARING ON HB 895

Presentation and Opening Statement by Sponsor:

REP. JAN BROWN, House District 46, Helena, opened the hearing on HB 895. The bill has been amended since it was printed and somehow got caught in the crunch. The bill came out of the Legislative Council the way that you have it, but it should have these amendments to it.

Proponents' Testimony:

Ray Hoffman, Department of Health & Environmental Sciences (DHES), submitted HB 895 with amendments. **EXHIBIT 21**

Opponents' Testimony:

Bonnie Tippy, Montana Funeral Home Directors Association (FHDA), stated that the DHES asked if the FHDA would meet with them and discuss the problems with the burial transit permit and death certificates. The original bill was extremely burdensome and the FHDA was very concerned about it. Both groups sat down and started negotiations on the issues. There are still substantial problems with the bill. This legislation is saying that every death where the physician is not actually there when the last breath is drawn is not a medically attended death. No where in the codes, through their research, did they find an answer or any

HOUSE OF REPRESENTATIVES

HUMAN SERVICES AND AGING COMMITTEE

ROLL CALL DATE 2-20-91

NAME	PRESENT	ABSENT	EXCUSED
REP. ANGELA RUSSELL, CHAIR	✓		
REP. TIM WHALEN, VICE-CHAIR	✓		
REP. ARLENE BECKER	✓		
REP. WILLIAM BOHARSKI	✓		
REP. JAN BROWN	✓		
REP. BRENT CROMLEY	✓		
REP. TIM DOWELL	✓		
REP. PATRICK GALVIN	✓		
REP. STELLA JEAN HANSEN	✓		
REP. ROYAL JOHNSON	✓		
REP. BETTY LOU KASTEN	✓		
REP. THOMAS LEE	✓		
REP. CHARLOTTE MESSMORE	✓		
REP. JIM RICE	✓		
REP. SHEILA RICE	✓		
REP. WILBUR SPRING	✓		
REP. CAROLYN SQUIRES	✓		
REP. JESSICA STICKNEY	✓		
REP. BILL STRIZICH	✓		
REP. ROLPH TUNBY	✓		

CS05HUMSER.MAN

EXHIBIT 17
DATE 2-20-91
HB 917

MONTANA DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
AIDS Prevention Act Amendment
House Bill 917 Testimony--2/20/91

Representative Russell and members of the Committee, I am Judith Gedrose, Chief of the Preventive Health Services Bureau of the Montana Department of Health & Environmental Sciences and wish to provide testimony in support of House Bill 917.

In 1989, the legislature passed the AIDS Education and Prevention Act which set consent and counselling standards for those being tested for exposure to the virus causing AIDS. It also had provisions intended to protect others, such as organ recipients. There was concern testing might be decreased by implementation of the act. Testing data indicates this was not the case. There was a 14% increase in the number of HIV tests performed in 1990 over the number done in 1989 at the MDHES Public Health Laboratory.

The proposed revisions to the Act contained in HB917 address problems which have occurred since the 1989 adoption of the statute. They are at least:

1. The existing statute has no provision for testing of a person in a coma or otherwise unable to give consent to testing. The amendments allow next of kin and others to provide appropriate consent.

2. The requirement for a test immediately prior to donation of an organ, semen, etc. in the existing statute conflicts with national standards for donation. The amendments would allow DHES to incorporate, by rule, nationally-accepted standards for handling such donations.

3. The existing statute has caused confusion relative to insurance companies reporting back to persons applying for coverage when the company requires HIV testing. The amendments clarify the role of the insurance company in this area.

4. The existing statute allows release of information under the Uniform Health Care Information Act (Title 50, Chapter 16, Part 5). However, local health departments may have information collected outside the patient-health care provider relationship, making the information collected subject to the more restrictive Government Health Care Information Act and the amendments clarify this.

MDHES supports HB917. The Department drafted the bill after receiving comments over the past 2 years.

cc: Representative Howard Toole

BEFORE THE HOUSE COMMITTEE ON HUMAN SERVICES AND AGING

TESTIMONY ON HOUSE BILL 917

Presented by: F. Woodside Wright
Helena, Montana

Thank you for this opportunity to speak on proposed amendments to the AIDS Prevention Act. My Name is F. Woodside Wright. I speak to you as the current Chairman of the AIDS Advisory Council of the Montana Department of Health and Environmental Sciences. This council is the only group that pulls together most of the organizations dealing with AIDS. The Council has a membership that ranges from community based organizations, to the University system, to Out in Montana, Home Health care agencies, the Montana Medical Association, the Montana Nurses Association, The State Bar Association, local health departments and from time to time executive branch agencies. Meetings are held quarterly. One of the main objectives is to provide ongoing discussion between the different groups that deal with AIDS and to address problem areas as they arise.

One example of addressing problems is the review and comment on what is now HB 917. During the last biennium local health departments, people with AIDS, state employees working with AIDS programs, counsellors, physicians, nurses, and others identified problems with the implementation of the AIDS Prevention act. In conjunction with Advisory Council members and others the Health Department put together a proposal for revising the AIDS Prevention Act. The proposal was distributed to Advisory Council members; comments were sought and received; then in early January 1990 the

EXHIBIT
DATE 2-20-91
HB 917

council met to discuss the proposed legislation. That meeting resulted in some changes to the DHES proposal and a general advisory council consensus of the members present was derived. There are Council members that do not fully support the January meeting results. Consensus is reflected in most of the bill before you. The areas of the bill that do not have Advisory Council consensus are:

1) Section 1, page 3 lines 15-17. This wording was not addressed by the council.

2) Section 2, pages 9-10 lines 24-2 and related material at Section 2, pages 6-7 lines 24-6. The advisory council believes an insurance company should be required to provide the test results and counselling. There is no compelling reason to treat an insurance company differently from others who require HIV tests.

3) Section 2, page 11 lines 1-3. There was no consensus on this provision. The proposal raises major concerns with some members of the council because of the potential for abuse by not only individuals who are contacted by public health officers, but by those health officers themselves. This concern derives from the social stigma, discrimination, emotional and psychological trauma and irrational fears that result from a positive diagnosis of HIV or AIDS or AIDS Related Complex.

4) Section 6 of the bill was not addressed by the Advisory in any detail at all. The Advisory council addressed a physician's responsibility to discuss with a patient's spouse the determination that a patient had was HIV+ or had AIDS. Generally, the council believes the physician should discuss such information with the spouse if the patient does not do so. However, there is no agreement to amend

EXHIBIT 18
DATE 2-20-91
HB 917

the Health Care Information Act, particularly with language as broad as is presented in HB 917. The proposed wording appears to be broader than the revision of the AIDS Prevention Act and as such may raise issues which should be addressed elsewhere.

In Summary, the proposed revisions to the AIDS prevention Act upon which the AIDS Advisory Council has discussed and reached a consensus, are needed and should be adopted. Any concerns with the remaining provisions of the bill are of a type that can be addressed upon consideration in the Senate.

A DO PASS RECOMMENDATION ON HB 917 IS REQUESTED

Submitted this 20th day of February, 1991.

EXHIBIT 19
DATE 2-20-91
HB 917

ACLU OF MONTANA
AMERICAN CIVIL LIBERTIES UNION

P. O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086

State Office
335 Stapleton Building
Billings, Montana 59101

BOB ROWE
President

SCOTT CRICHTON
Executive Director

JEFFREY T. RENZ
Litigation Director

February 20, 1991

Madam Chair, Members of the Committee:

For the record, my name is Scott Crichton, Executive Director of the American Civil Liberties Union of Montana, a dues paying membership based organization of more than 300 families concerned about maintaining protections guaranteed us by the Constitution and the Bill of Rights.

This is generally a well drafted bill, that has had significant input from AIDS advocacy groups across the state. I am here today to support HB 917 as it is written if it is adequately amended to address several areas of concerns to protecting basic civil liberties.

I'd first like to draw your attention to Section 2, subsection 3 (d) [page 11], where the bill presents new language for the performance of HIV-related testing pursuant to 50-18-107 and 108. This refers to sexually transmitted diseases and the powers and duties of health officers. While AIDS is sometimes transmitted by sexual contact, it is not exclusively transmitted in this manner. The AIDS prevention act as it presently stands doesn't allow drawing the blood without informed consent. As this bill is now written, we are to incorporate the provisions of the sexually transmitted disease statutes into the AIDS statutes. We would then be voiding the more protective and stringent provisions of the AIDS Prevention Act. There are probably some very good examples of how this could be misused by michevious and malevolent individuals. The potential violations of privacy rights far outweigh perceived HIV status determination without persons consent. By cross referencing sexually transmitted diseases with AIDS protections, we are potentially opening up real problems- jail time not being the least of these.

Also of concern in Section 2, subsection 4 [page 2] are proposed changes in language regarding anonymous testing. Anonymous testing is a critical element to an effective testing program and we are concerned that this rewording may signal the beginning of the end for anonymous testing. Counseling test sites established by the department should not be eliminated and we are concerned that this is paving the way for just that. We would recommend keeping the old language here. If it is our intent to get folks in for anonymous testing, we need such testing to be available as widely as possible. We would recommend then that the state commit to state sponsored sites.

"Eternal vigilance is the price of liberty"

Further concerns in Section 2, subsection 7 are also troubling. Why should insurance companies be any different in this regard? Everyone else has to deliver test results in person. What is the compelling reasoning of why insurance companies should be exempted. Someone tested deserves being informed if results are positive or negative.

Section 6, subsection 9 [page 16] also presents some problems from a civil liberties perspective. While there are no doubt some circumstances where this addition makes good sense, it could possibly be misused by corporations also viewed as "persons" from an insurance company or employer's standpoint. It opens door too widely regarding the dissemination of information, giving doctors the ability to override this fundamental patient's right of privacy. Why does this addition also include "any other other individual?"

To close, when we can see a bill that has amendments included that address the concerns we have brought up today, we can recommend a DO PASS on HB917. We hope this committee can make that happen. Thank you.

MISSOULA CITY-COUNTY HEALTH DEPARTMENT

20

DATE 2-20-91

HB 917

February 20, 1991

Honorable Representative Angela Russell
Human Services and Aging Committee
Montana House of Representatives
Capitol
Helena, MT 59620

Dear Representative Russell,

I am writing in SUPPORT of HB 917 generally revising the AIDS Prevention Act. I serve on the Montana Department of Health and Environmental Sciences AIDS Advisory Council which, through a lengthy and formal process, endorsed the majority of the proposed revisions.

Our basic purpose in revising the AIDS Prevention Act was to make it more workable in its practical application and clarify the language. We operated from the premise that the original intent of the bill - the provision of informed consent - be preserved. An important substantive change that is addressed in the bill is to allow for testing of an impaired patient, either through proxy consent or by health provider determination, when the test result was deemed necessary for treatment of the patient. A great deal of negotiation and review went into developing the approach to this issue as it is presented to you today in HB 917.

Speaking for myself, I believe a similar pathway could exist for testing an impaired patient who is a source patient in an health care worker exposure situation. But, I do not endorse amendments that would circumvent seeking informed consent when a conscious, competent patient is involved. To allow for such provisions would conflict with guidelines issued by the Centers for Disease Control, the Occupational Safety and Health Administrations, and would directly conflict with the act's original intent.

The bill as presented to you today does have a few other changes that were not reviewed or endorsed by the AIDS Advisory Council. I believe these issues are negotiable and none of them, in my mind, should have sufficient weight to hamper the passage of this bill.

I strongly urge your support of HB 917 and I thank you for your diligence in attempting to sort out the many AIDS issues presented to you this session.

Sincerely,

E. Leahy

Ellen Leahy
Health Officer

cc Representative Howard Toole

not apply to [sections 1 through 3]."

Page 1, line 25.
Strike: "may"
Insert: "shall"

Page 2, lines 2 through 19
Following: line 1
Strike: lines 2 through 19
Insert: "(a) the health care provider who conducted the test, who shall release the test results to the convicted person and to any victim of the convicted person;
(b) the health officer to whom the department has required the reporting of communicable diseases under 50-1-2-2; and
(c) the defense counsel for the convicted person."

Page 2, line 22.
Strike: "or local board of health"

Page 3, lines 1 through 3.
Strike: "for" on line 1 through "or" on line 3

Page 3, line 3.
Following: "treatment"
Insert: "or prosecution or defense of the convicted person"

Page 3, line 6.
Strike: "authorized"
Insert: "required"

Vote: Motion carried unanimously.

Motion/Vote: **REP. STICKNEY MOVED HB 761 DO PASS AS AMENDED.** Motion carried unanimously.

EXECUTIVE ACTION ON HB 780

Motion/Vote: **REP. STICKNEY MOVED HB 780 BE TABLED.** Motion carried unanimously.

EXECUTIVE ACTION ON HB 917

Motion: **REP. STICKNEY MOVED HB 917 DO PASS.**

Motion/Vote: **REP. BECKER** moved to amend **HB 917. EXHIBIT 27.** Motion carried unanimously.

Motion/Vote: **REP. J. RICE** moved to amend **HB 917. EXHIBIT 28.** Motion carried unanimously.

Motion/Vote: REP. J. RICE MOVED HB 917 DO PASS AS AMENDED. Motion passed unanimously.

EXECUTIVE ACTION ON HB 281

Motion/Vote: REP. MOVED HB 281 BE TABLED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 895

Motion: REP. BROWN MOVED HB 895 DO PASS.

Motion/Vote: REP. BROWN moved to amend HB 895. EXHIBIT 29. Motion carried unanimously.

Motion/Vote: REP. BROWN MOVED HB 895 DO PASS AS AMENDED. Motion carried 19-1 with REP. CROMLEY voting no.

EXECUTIVE ACTION ON HB 681

Motion: REP. J. RICE MOVED HB 681 DO PASS.

Motion/Vote: REP. J. RICE moved to amend HB 681. EXHIBIT 30. Motion carried unanimously.

Motion/Vote: REP. J. RICE MOVED HB 681 DO PASS AS AMENDED. Motion carried 18-2 with REPS. BOHARSKI and KASTEN voting no.

EXECUTIVE ACTION ON HB 246

Motion/Vote: REP. BOHARSKI MOVED TO RECONSIDER ACTION ON HB 246 AND TAKE FROM THE TABLE. Motion carried 18-2 with REPS. DOWELL and GALVIN voting no.

Motion/Vote: REP. BOHARSKI moved to amend HB 246. Motion carried unanimously.

Motion/Vote: REP. BOHARSKI MOVED HB 246 BE TABLED. Motion carried unanimously.

ADJOURNMENT

Adjournment: 9:30 p.m.

Angela Russell
ANGELA RUSSELL, Chair

Jeanne C. Krumm
Jeanne Krumm, Secretary

AR/jck

HOUSE STANDING COMMITTEE REPORT

February 23, 1991

Mr. Speaker: We, the committee on Human Services and Aging report that House Bill 917 (first reading copy -- white) do pass as amended .

Signed: _____
Angela Russell, Chairman

And, that such amendments read:

1. Title, line 24.
Following: "REQUIRED;"
Insert: "PROVIDING FOR HIV TESTING OF PATIENTS POTENTIALLY INFECTING HEALTH CARE FACILITY PERSONNEL OR EMERGENCY RESPONDERS;"

2. Page 3, line 17.
Following: "transmission"
Insert: "in accordance with modes of transmission recognized by the center for disease control of the United States public health service"

3. Page 9, line 8.
Following: "~~department~~"
Insert: "at one of the counseling-testing sites established by the department, or "

4. Page 10, lines 24 and 25.
Strike: "24 hours"
Insert: "a reasonable time"

5. Page 11.
Following: line 3
Insert: "(10)(a) If an agent or employee of a health care facility, a health care provider with privileges at the health care facility, or a first responder has been voluntarily or involuntarily exposed to a patient in a manner that may allow infection by HIV by a mode of transmission recognized by the center for disease control of

the United States public health service, the physician of the patient shall, upon request of the exposed person, notify the patient of the exposure and seek written informed consent in accordance with guidelines of the center for disease control for an HIV-related test of the patient. If written informed consent cannot be obtained, the health care facility, in accordance with the infectious disease exposure guidelines of the health care facility, may, without the consent of the patient, conduct the test on previously drawn blood or previously collected bodily fluids to determine if the patient is in fact infected. A health care facility is not required to perform a test authorized in this subsection. If a test is conducted pursuant to this subsection, the health care facility shall inform the patient of the results and provide the patient with post-test counseling. The patient may not be charged for a test performed pursuant to this subsection. The results of a test performed pursuant to this subsection may not be made part of the patient's record and are subject to 50-16-1009(1).

(b) For the purposes of this subsection, written informed consent means an agreement in writing that is freely executed by the subject of an HIV-related test, by the subject's legal guardian, or if there is no legal guardian and the subject is incapacitated, by the subject's next-of-kin, significant other, or a person designated by the subject in hospital records to act on the subject's behalf.

Renumber: subsequent subsection

6. Page 16, line 20.
Strike: "person"
Insert: "contact as defined in 50-16-103"

7. Page 16, line 22.
Strike: "patient"
Insert: "contact"

8. Page 16.
Following: line 23
Insert: "NEW SECTION. Section 1. [standard] Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Renumber: subsequent section

HEARING ON HOUSE BILL 917

Presentation and Opening Statement by Sponsor:

Representative Howard Toole opened by saying due to his former service on the Board of Health and Environmental Sciences he was asked by the department to become involved with HB 917. A substantial amount of work has gone into the bill. He said Representative Jim Rice also worked on the bill. He read sections of the bill to the committee members. Page 7, definitions section. Section 2, pertains to when an AIDS test can be ordered. It amends a provision that previously said a person could not request an HIV test without first getting written informed consent from the subject. The tenor of that statute is being changed by adding to the numbers of people who can consent. The purpose is to enable a next of kin or significant other to execute that document if the subject is unconscious or mentally incapacitated. The conditions under which such a person can sign a consent form are laid out in the bill. Page 8, it can be done by anyone designated in hospital records if the subject is in the hospital. Other changes on page 8, section 2 include a physician or health care provider when ordering an HIV test has certified that written informed consent has been obtained. That is insurance that the procedures have been complied with. Subsection (3), page 8, line 16, addresses how pretest counseling is to be handled. We are extending pretest counseling to the same people signing the informed consent document. A related subject begins on page 10, informed consent is not required. This is one of the most important provisions of this bill. The conditions under which informed consent can be avoided are being expanded to address several situations. Page 10, medical indications of an HIV related condition, it is advisable to determine the proper course of treatment. When the subject is incapacitated or unconscious and there is some medical indication of HIV or a related condition. The test is advisable to determine the proper course of treatment for the subject. This situation applies only when none of the people who normally must be approached are available within a reasonable time. That is an emergency situation. The focus is on the condition of the patient. The other situation where informed consent is not required is for the case where there has been probable exposure to people providing treatment or responding to an emergency circumstance. That language is from another bill that was folded into this measure. Pages 11 and 12, line 12, allows for testing without informed consent of a person who is in a similar situation, unable to give the consent and there has been involuntary exposure. He read from the bill. It is intended to address the circumstance where an emergency health responder has had possible exposure and the informed consent is not available. Testing is to be done on previously drawn blood. There are stringent limitations in the language. Insurance is addressed in the bill.

Representative Toole continued by saying when testing is done in connection with an application for insurance, there was discussion about what should be done when HIV testing has been performed. This bill sets forth a rule that if the insurance company receives information that the test for HIV is positive then the insurer is to contact the health care provider for the individual. If the test is negative they can directly contact the subject. Routine HIV testing is done for insurance purposes and the great majority of situations result in negative findings. There should be a mechanism to protect the subject for whom the test is positive. This bill sets forth that the insurer is to contact a designated medical provider. In that context this bill requires such a person for HIV testing. Section 3, page 12, addresses the testing of organ donors that provides that the testing be done in accordance with nationally accepted standards adopted by the Department of Health. There are provisions regarding the confidentiality of records and are to be disclosed only to the extent allowed by the language on page 13 of the bill. In Section 6 of the bill it addresses the disclosure without the patients authorization. We added a circumstance where their can be disclosure of information about a patient without the patients authorization. This language is based on the need to know. If the health care provider reasonably believes that disclosure will avoid or minimize an eminent danger to health or safety of the contact or another individual. This allows for the disclosure of results without the patients authorization. The Department of Health has pointed out the need to dovetail for the emergency care responder. The existing provisions of law which allow for the submission of a form by the responder to file that form with the medical care provider. The amendment will provide that it constitutes a request to the physician to seek consent from the subject for an HIV test. It is a mechanism to enable the testing to occur if an emergency responder believes they have been exposed. He asked the chairman to recognize the witnesses.

Proponents' Testimony:

The first witness was Anita Masters, a registered nurse from Great Falls. As part of her job she performs HIV counseling of patients, physicians and employees. Last year they did 64 HIV tests because health care workers were exposed to needle sticks, body fluids or blood. Only 30 were actual diagnostic testing of patients. Twice as many are performed because of needle stick injuries. She said she is in favor of an amendment that would allow a broader definition of who can sign for HIV consent. She said she is pleased that health care workers and emergency service providers are recognized as providing care. She said on page 11, line 18, there is a problem. This law would mandate that the health care worker has to inform the patient of the results of the HIV test. She said it would put the health professional in an adversarial position with the patient.

The second witness was Dr. Cheryl Reichert, pathologist from Columbus Hospital. See Exhibit #2 for a copy of her testimony.

The third witness was Bruce DeSonia, an employee of the Department of Health and Environmental Sciences. See Exhibit #3 for a copy of his testimony.

The fourth witness was Kathy Camparolli, representing the Montana Nurses Association. See Exhibit #4 for a copy of her testimony.

The fifth witness was Vern Erickson, representing the Montana State Firemen's Association. He said they are involved in emergency responses. The environments they work in are totally out of control. He said he appreciated the comments of Dr. Reichert especially in regards to body fluids. He urged the committee to take action to assure emergency workers that tests will be taken when necessary.

The sixth witness was Drew Dawson, chief of the Emergency Medical Services Bureau for the Department of Health and Environmental Sciences. See Exhibit #5 for a copy of his testimony.

The seventh witness was Jim Aherns, president of the Montana Hospital Association. He said they started to get calls from hospital personnel in 1989. He said they supported this bill. Coalitions are a fine balance and have worked on this bill for a long time. He said they would be generally supportive of looking at the amendments. Of major importance is bill passage.

The eighth witness was Mary Beth Federius, public health administrator for Lewis and Clark City/County Health Department. She said she supports the hard work that went into the bill and the tremendous amount of compromise that took place. To fight this epidemic we need a balance of everyone's rights. We need trust so people come forward, especially those infected. This bill comes along way towards balancing this issue. Any language that loosens the intent of the consent laws will scare the infected parties. If these people do not find out they are infected the disease will spread. Take a close look at the proposed changes to ensure that a balance is present. The patient must have the opportunity for consent. The role of the physician is to educate, explain the need for the test and over 99 percent of source patients consent. If the person refuses there is a provision in the bill that allows for testing existing blood samples. That information should be shared with the source patient. She said this was a good bill and was in absolute support of the bill.

Opponents' Testimony:

None.

Questions From Committee Members:

Senator Franklin asked about the proposed amendments from Drew Dawson.

Mr. Jerry Loendorf, representing the Montana Medical Association, said they agreed with them but they did not define the term 'first responder' or 'emergency responder'. The House of Representatives amended in the term 'first responder' but did not define it. He said he had read Mr. Dawson's amendment but said it only referred to persons who transported the patient. He handed the committee Exhibit #6, a copy of his proposed amendment.

Senator Hager asked Representative Toole about the availability of the tests.

Representative Toole suggested that Dr. Reichert answer that question.

Dr. Reichert said in Montana their has not been a reported case of AIDs transmitted through transfusion. Their are a couple of people in Montana who acquired AIDS from blood transfusions given in other states. The reason the test takes so long is that positive tests are repeated. If it is positive it is verified by a totally different technology. The AZT drug is experimental. The medication is taken four or five times a day for about six weeks. It is a possibility that the health care worker who is infected is not testing positive at that time. We suggest a follow-up test at three and six months.

Closing by Sponsor:

Representative Toole said the legislation has received a great deal of attention and effort. There has been work during this session and the two years leading up to the session. The Committee On Human Services and Aging in the House of Representatives worked extensively on this bill. The attention this committee has given this hearing suggests the need to pass the bill. He said the issues had been narrowed considerably and he urged passage.

EXECUTIVE ACTION ON HOUSE BILL 176

Motion:

Senator Hager moved to strike the Public Health, Welfare and Safety Senate Standing Committee Report amendments dated March 14, 1991 in their entirety.

Discussion:

Senator Eck said HB 176 was referred back to Committee. Senator Rye was originally carrying the bill.

Senator Towe suggested adding language that would require that the defendant also receive the information.

Senator Franklin said the whole issue was the results of a positive test.

Senator Jacobson said it is assumed that if you do not receive the results the tests were negative.

Senator Franklin said she was not sure what this bill accomplished.

Chairman Eck asked who was notified under present statutes regarding the outcome of the tests.

Mr. DeSonia said the prisoner would be notified. The victim would not. Only the Department of Health or other health care providers with consent of the patient would be notified.

Senator Franklin said she wanted to make sure victims were notified.

Amendments, Discussion, and Votes:

There being no objections the motion carried.

Recommendation and Vote:

Senator Rye moved to hold the final vote on the bill until Mr. Connor could be present. There being no objections the motion carried.

EXECUTIVE ACTION ON HOUSE BILL 917

Motion:

Senator Franklin moved adoption of amendment #4 of Exhibit #3.

Discussion:

None.

Amendments, Discussion, and Votes:

There being no objections the motion carried.

Recommendation and Vote:

Senator Franklin moved concurrence as amended. There being no objections the motion carried.

ROLL CALL

PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

Date 03/25/91

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BURNETT	X		
SENATOR FRANKLIN	X		
SENATOR HAGER	X		
SENATOR JACOBSON	X		
SENATOR PIPINICH	X		
SENATOR RYE	X		
SENATOR TOWE	X		
SENATOR ECK	X		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration House Bill No. 917 (third reading copy -- blue), respectfully report that House Bill No. 917 be amended and as so amended be concurred in:

1. Title, page 2, line 2.
Following: "FACILITY"
Insert: "OR EMERGENCY SERVICES"
Following: "PERSONNEL"
Strike: "OR EMERGENCY RESPONDERS"

2. Title, page 2, line 14.
Following: "50-16-529,"
Insert: "50-16-702,"

3. Page 11, line 14.
Following: "A"
Strike: "FIRST RESPONDER"
Insert: "person providing emergency services who is described in 50-16-702(1)"

4. Page 18, line 15.
Following: line 14
Insert: "Section 7. Section 50-16-702, MCA, is amended to read:
"50-16-702. Report of unprotected exposure to disease. (1) A report may be filed, as provided in subsection (2), by a person:
(a) employed by or acting as a volunteer with a public or private organization that provides emergency services to the public, including but not limited to a law enforcement officer, firefighter, emergency medical technician, corrections officer, or ambulance service attendant; and
(b) who, in his official capacity with the public or private organization, attends or assists in transporting a patient to a health care facility and believes he has sustained an unprotected exposure.
(2) A person who qualifies in subsection (1) may submit to the health care facility, on a form prescribed by the department, a report of unprotected exposure that contains his name and other information required by the department, including a description of the unprotected exposure.

(3) If the exposure described in the report occurred in a manner that may allow infection by HIV, as defined in 50-16-1003, by a mode of transmission recognized by the center for disease control, then submission of the report to the health care facility constitutes a request to the patient's physician to seek consent for performance of an HIV-related test pursuant to 50-16-1007(10)."

Renumber: subsequent sections

Signed: _____
Dorothy Eck, Chairman

Amd. Coord.

Sec. of Senate